FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 924 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

CORAM: A.S. OKA, J.
DATE : 24th August, 2004.

P.C.:-

1. Heard learned counsel for the parties.

2. Admittedly, the suit property was held by one Ganpati who died in the year 1953. The Respondent No.3 is the Defendant No.1 is the widow of deceased Ganpati. The Respondent no.1 is the son of Balaram and Respondent no.2 is the daughter of Balaram. Balaram was the son of Ganpati. Ganpati had a daughter by the name Indubai. Balaram died in the year 1962. As Ganpati died in the year 1953, the Respondent no.3, i.e. the widow acquired one half share in the properties in the hands of Ganpati by virtue of the provisions of the Hindu Womens Right to Property Act, 1937. The widow's limited interest was converted into full interest after coming into force of the Hindu Succession Act, 1956. As Ganpati expired prior to coming into force of the said act of 1956, his daughter Indubai will not get any share in the property held by Ganpati. Hence, Balaram had one half share in the property

and Respondent No.3 had one half share. The present Appellant (Original Defendant no.2) is the purchaser of the property through Respondent no.3.

3. The Appellate Court has held that Respondent No.3 could have transferred only one half share in the property which she possessed. No fault can be found with the Appellants Court, if finding was not recorded that Respondent No.3 had one half individual share in the property could not have sold only one half share to which she was entitled to.

5. Mr. Umbrekar, learned counsel for the Appellant submitted that Respondent Nos. 1 and 2 who are the Plaintiffs have sold other two properties held by deceased Ganpati. And therefore now they cannot say that Respondent no.3 had no right to sell the entire property. Once it is found that Respondent No.3 was entitled to only one half share, no fault can be found with the decree passed by the Appellate Court. As Appellant is the purchaser of undivided share of Respondent no.3 in the property mentioned in the sale deed, he can always maintain a suit for general partition subject to observation made above. Second Appeal is dismissed with no orders as to costs.

JUDGE